

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

To Be Argued by
Eugene Welch

76-1250

In The
United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

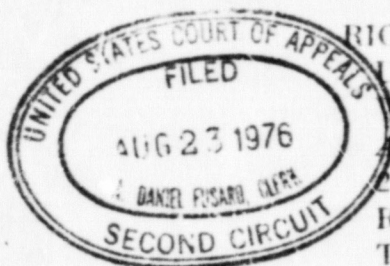
vs.

JOSEPH C. VISPI,

Defendant-Appellant.

On Appeal From the Judgment of the
United States District Court
for the Western District of New York

**BRIEF FOR PLAINTIFF-APPELLEE.
UNITED STATES OF AMERICA**



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BRIEF FOR PLAINTIFF-APPELLEE,
UNITED STATES OF AMERICA

Statement of Issues

I. Whether the requirements set forth in the appropriate Statute of Limitations adequately preserve the Constitutional rights to due process and speedy trial, of the Fifth and Sixth Amendments to the Constitution for a lawyer charged with willful failure to file income tax.

II. Whether the time lapse of 136 days from the time the Information was filed until the time the Government voiced its readiness for trial afforded defendant his Constitutional right to a speedy trial and conformed with the standards outlined in Rule 48(b), Fed. R. Crim. P., the Second Circuit Rules and the

Western District Plan for Prompt Disposition of Criminal Cases.

III. Whether the evidence was sufficient to support a conviction of willful failure to file income tax returns under 26 U.S.C. §7203.

Statement of the Case

This case is on appeal from a judgment of conviction and sentence entered in the Western District of New York. Joseph C. Vispi was convicted on two counts of violations of 26 U.S.C. §7203, willful failure to file timely income tax returns for the years 1967 and 1968. The defendant was sentenced on May 10, 1976 to a fine of \$500.00 on each of these misdemeanor counts.

In April, 1969 the Internal Revenue Service commenced an audit of Mr. Vispi's 1965 and 1966 returns which had been filed delinquently in April of 1968 (p. 61, 65, 77). During the course of that audit Mr. Vispi told Revenue Agent Pardi that he, Vispi, had filed his 1967 and 1968 returns and would show Pardi his copies (p. 79). Later in 1969 during the audit of the 1965 and 1966 years Agent Pardi discovered that Mr. Vispi had not yet filed returns for 1967 and 1968 (p. 80). Mr. Vispi then assured Agent Pardi that he, Vispi, was about to file his 1967 and 1968 returns (p. 80). Therefore Agent Pardi held open his audit of 1965 and 1966 so he could compare those returns to the 1967 and 1968 returns. Contrary to the assertion on page 4 of Vispi's brief herein Agent Pardi did not grant an extension of time to Mr. Vispi for filing his 1967 and 1968 returns. A fair reading of Agent Pardi's testimony and his activity log (Ex. D-3, p. 372) shows that Pardi simply agreed to hold open his audit of 1965 and 1966 for another week to allow Mr. Vispi an opportunity to provide Agent Pardi with copies of the as yet not filed 1967 and 1968 returns. Mr. Vispi never received any extensions of time on his 1967 and 1968 returns and he admitted that he knew this (p. 224, 331).

Finally, in October 1969, Mr. Vispi's case was referred to the IRS Intelligence Division for criminal investigation (p. 82). Then in January, 1970 Mr. Vispi finally filed his 1967 and 1968 returns (p. 60, 61). The Intelligence Agent completed his investigation in November, 1970.

After the completion of the criminal investigation Mr. Vispi or his counsel, or both, asked for and received several conferences with the IRS and then the Justice Department in an effort to convince those agencies that he should not be prosecuted. (See *e.g.*, p. 329 and the letters in the Supplemental Appendix: Letter of November 15, 1971 from the firm of Kostelanetz and Ritholz to L. Jay G. Philpott, Jr., Department of Justice; Letter April 17, 1972 from the firm of Garvey, Magner and Sullivan to the United States Attorney; Letter of April 18, 1972 from the firm of Ohlin, Damon, Morey, Sawyer and Moot to the United States Attorney.) As is obvious from those letters, great efforts were made after the completion of the investigation to convince the government to decline prosecution and all of those efforts were given careful attention which caused the delays now complained of by the appellant Vispi.

On February 1, 1974 after carefully considering all of Vispi's arguments against prosecution, the Information was filed. As is discussed in Point I(B) below the two District Court Judges in Buffalo excused themselves and caused a delay by transferring the case to Judge Burke in Rochester.

The defense then caused another delay by requesting an adjournment of the arraignment from April 8, 1974 to April 22, 1974. The defense caused another delay by its discovery motion discussed in Point I(B) below.

The defendant Vispi waived his right to a jury trial and was tried before the Court on October 23 and October 24, 1975. The transcript of that trial was prepared and filed December 16, 1975.

On March 3, 1976 counsel submitted their respective briefs in support of their respective proposed findings and Judge Burke had the briefs of counsel and the transcript of the trial to carefully review from March 3, 1976 until April 20, 1976 when he entered his findings herein.

The trial had only one real issue, willfulness. The government has set forth a discussion of the evidence as it relates to willfulness in Point II below.

POINT I

The defendant's speedy trial rights under the Constitution and applicable statutes and rules were not violated.

A. *The Pre-Prosecution Period*

The Statute of Limitations is considered the primary guarantee against bringing overly stale criminal charges. *United States v. Ewell*, 383 U.S. 116, 122 (1966). In the present case Mr. Vispi concedes that formal charges were entered against him within the required period.

The pre-prosecution delay neither deprived Mr. Vispi a speedy trial nor denied him due process. In *United States v. Feinberg*, 383 F.2d 60, 64 (2d Cir. 1967), this Court recognized that a delay before public accusation is usually less damaging and more easily justified than any subsequent delay.

More recently, this Court found itself disinclined to reduce the period of limitations prescribed by Congress absent a showing of some proof that the government utilized the delay as an intentional device to gain tactical advantage over an accused and that the defendant was prejudiced thereby. *United States v. Eucker*, 532 F.2d 249, 255, (2d Cir. 1976).

Mr. Vispi suffered no actual prejudice because of the pre-information delay. Rather, he was able to continue his private

pr...e free from the stigma of public accusation. He was free from much of the anxiety and concern that accompanies public charges. *United States v. Ewell*, at 120.

The record in no way reveals that Mr. Vispi suffered financial loss because he was a target of a tax investigation. It would be equally plausible to assume that Mr. Vispi suffered because of his chosen work habits.

Mr. Vispi fails to show any contrived procrastination by the Government and can point to no prejudice established beyond mere conjecture. *United States v. Eucker*, at 255. Rather, he should carry the burden for much of the delay. His counsel, colleagues and friends made several attempts on his behalf to dissuade the Government from prosecuting him. (See correspondence in supplemental Appendix.) Each attempt necessarily forestalled prosecution and prolonged the investigation.

One further point should be noted: not only was Mr. Vispi a well-respected attorney, but he was also represented by able counsel as early as November 1970 (p. 329). In *Feinberg, supra*, at 66, this Court weighed the education and experience of the defendant in determining actual prejudice. In the instant case this Court should factor in Mr. Vispi's professional expertise, that of his distinguished counsel and that of his colleagues.

United States v. Marion, 404 U.S. 307, 323 (1971), clearly recognizes that "there is no need to press the Sixth Amendment into service to guard against the mere possibility that pre-accusation delays will prejudice the defense in a criminal case since statutes of limitations perform that function."

Marion holds that it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that "engage the particular protections of the speedy trial provision of the Sixth Amend-

ment." It cannot justify invocation of the speedy trial provision prior to arrest. The *Marion* holding places Mr. Vispi outside the reach of the Sixth Amendment protection; he was neither arrested nor publicly accused.

Passage of time, whether before or after arrest, may impair memories, cause evidence to be lost, deprive the defendant of witnesses and otherwise interfere with his ability to defend himself. But this possibility of prejudice at trial is not itself sufficient reason to wrench the Sixth Amendment from its proper context. Possible prejudice is inherent in any delay, however short; it may also weaken the government's case. *Marion* at 321-2.

Admittedly, Mr. Vispi was the "target" of a criminal tax investigation. However, he is not an "accused" and therefore the Sixth Amendment right is not activated. *Marion*, 404 U.S. 307 (1971).

Mr. Vispi was not truly the focus of a criminal investigation as he would have this Court believe. *Beckwith v. United States*, 44 U.S.L.W. 4499 (U.S. April 21, 1976), holds that during a non-coercive, non-custodial criminal tax investigation, the taxpayer was not truly a "focus" for *Miranda* purposes.

This is an analogous situation. When approached by Special Agent Francis, Mr. Vispi voluntarily went to I.R.S. office at a time he himself found convenient (p. 83). The interview was admittedly low-key, for Mr. Vispi did not even recognize himself as the target of a criminal investigation for at least a year (p. 328).

Just as Fifth Amendment *Miranda* rights do not attach until a person has been deprived of his liberty, so too for the Sixth Amendment speedy trial guarantees. *Marion v. United States*, 404 U.S. 307 (1971). Therefore, it is fitting that this Court follow the precedent set by *Beckwith*. As Mr. Chief Justice Burger observed, the interviews to obtain tax information may well be the "starting point" of criminal prosecution "[b]ut this

amounts to no more than saying that a tax return signed by a taxpayer can be the 'starting point' for a prosecution". *Beckwith* at 4501.

B. The Post Information Period

The Government conformed to the Second Circuit Rules and the Western District Plan for Prompt Disposition of Criminal Cases.

For all cases the government must be ready for trial within six months from the date of the arrest, service of summons, detention, or the filing of a complaint or of a formal charge upon which the defendant is to be tried, whichever is earliest. Rule 4, Second Circuit Rules Regarding Prompt Disposition of Criminal Cases.

The Western District Plan is the same in relevant parts.

In this case, considering excludable periods, the government was ready for trial 136 days after the filing of the Information, well within the 180 day limit imposed by the Second Circuit and Western District.

The standards enunciated in each plan exclude:

the period of delay while proceedings concerning the defendant are pending, *including but not limited to* proceedings for the determination of competency and the period during which he is incompetent to stand trial, pretrial motions, interlocutory appeals, trial of other charges and the period during which such matters are *sub judice*. Second Circuit Plan, R. 5 (emphasis added)

At least 59 days must be excluded in assessing the pretrial waiting period. (See calendar in Supplemental Appendix).

First, the District Court Judges caused an 11 day delay after the filing of the Information in Buffalo. Both Judges Henderson and Curtin felt it necessary to recuse themselves from the Vispi case to insure the appearance of propriety because they both knew the defendant, a Buffalo attorney. Judge Burke of

Rochester was assigned the case on February 12th, as shown by a notation in the government's Buffalo file. The United States Attorney's Office did not receive the file until February 19th, as evidenced by the office docket card.

Second, a 14 day delay may be charged to the defendant, or at least be recorded as neutral. This delay was occasioned by agreement of both counsel. Arraignment was originally set for April 8, 1974. It was adjourned to April 22, 1974. Though the record does not reveal who sought the adjournment, defendant's attorney, Mr. Moot, addressed a letter to Assistant U.S. Attorney Larimer on April 2, 1974 confirming April 22, 1974 as the arraignment date, (Supplemental Appendix), which letter suggests that the adjournment was requested by the defense.

Third, pretrial discovery motions caused a 34 day delay. Defendant's motion for discovery was filed April 24, 1974 and was returnable 19 days later on May 13, 1974. On May 13, 1974 Assistant U.S. Attorney Larimer advised the Court that Mr. Moot was willing to waive oral argument on the discovery motions but that Mr. Moot wished 10 days to file a memorandum of law. Mr. Larimer requested 5 days from the filing of defendant's papers to respond. Judge Burke then indicated that the matter would be submitted as of May 28, 1974. a letter from Mr. Moot to Mr. Larimer on August 8, 1974 indicated some misunderstanding. In a letter to Judge Burke on August 22, 1974 Mr. Moot clarified the situation for the Court (Supplemental Appendix).

Assuming for the sake of argument that the misunderstanding was chargeable to the government, the 34 days from the filing of the discovery motion to its submission to the Court are clearly the "pretrial motions" anticipated by the Second Circuit and the Western District in their respective plans.

C. Rule 48(b). Federal Rules of Criminal Procedure

Rule 48(b) of the Federal Rules of Criminal Procedure was designed to implement the right to a speedy trial. The rule is a mere restatement of the "inherent power of the court to dismiss a case for want of prosecution." Committee Note to Rule 48, 8A Moore's Federal Practice § 48.01.

Rule 48(b) is merely a skeleton which the Speedy Trial rules "flesh out" giving content to its sweeping language "by substituting a precise, albeit still flexible, six month rule." *Hilbert v. Dooling*, 476 F.2d 355, 361 (1973).

Since Mr. Vispi was afforded his right to a speedy trial as promulgated by the Second Circuit Rules and the Western District Plan, it follows that he received the right to a speedy trial guaranteed by Rule 48(b).

D. Speedy Trial Under the Constitution

In *Barker v. Wingo*, 407 U.S. 514 (1971), the Supreme Court was compelled to set out the criteria by which the Sixth Amendment right to a speedy trial is to be judged.

In determining exactly what the Constitution requires, the Supreme Court considered the Second Circuit Rules which establish that the government must be ready for trial within six months or the action will be dismissed. It rejected this approach, but only on the grounds that such a plan would force the Supreme Court to engage in rule-making activity. *Barker* at 523. The Supreme Court did not adopt the Second Circuit approach as its own "because the fixed time period goes further than the Constitution requires." *Barker* at 529.

Since the Second Circuit rules impose a more stringent standard than that mandated by the Constitution, and since the Second Circuit rules were complied with in the instant case, Mr. Vispi's Constitutional right to a speedy trial was insured.

Employing the balancing test advanced by *Barker v. Wingo*, 407 U.S. 514 (1972), it becomes obvious that Mr. Vispi received a Constitutionally-mandated speedy trial.

The delay before the government notified the Court and counsel that it was ready for trial in this case was merely 136 days. This delay is not "presumptively prejudicial." *Barker* at 330. This delay was not sufficiently lengthy to violate Mr. Vispi's Sixth Amendment right.

The Court must look at the government's notice of readiness filed 136 days after the Information. This Court has recognized that a written Notice of Readiness filed with the Court is a more than adequate measure. *United States v. Pierro*, 498 F.2d 386, 389 (2d Cir. 1973).

Once the Notice of Readiness was timely filed, in keeping with the Second Circuit Plan, no reason for the delay in bringing the case to trial was proffered by the government. No reason was necessary because the government was ready and able to proceed to trial and so indicated by its notice.

The government saw no need to justify to the defendant delays caused by the Court. The overcrowded condition of courts is public knowledge and it is neutral reason for delay. *Barker v. Wingo*, 407 U.S. 514, 531 (1971).

The delay in this case was neither strategically planned nor studied as it was in *United States v. Roberts*, 515 F.2d 642 (2d Cir. 1975). In *Roberts*, the government deliberately delayed trial to deprive the defendant of his youthful offender status. The delay in the Vispi case, however, is attributable to neutral causes.

Mr. Vispi properly asserted his right to a speedy trial. Once he asserted his right in a letter to the Assistant U.S. Attorney in charge of the prosecution, the Assistant U.S. Attorney promptly filed his Notice of Readiness to insure the defendant's rights. While Mr. Vispi's documented demand for a speedy trial at

various stages of the prosecution is entitled to strong evidentiary weight, the government's complete willingness to advise the Court of its readiness should be equally weighty.

The fourth factor is prejudice to the defendant. Mr. Vispi seems to have suffered little, if any, actual prejudice.

The defendant's reputation remained excellent at trial, as attested to by character witnesses, Judge Frederick M. Marshall (p. 69), Mr. James A. Garvey (p. 303), Mr. Philip H. Magner, Jr. (p. 344) and Mr. William C. Brennan (p. 345). Mr. Vispi was still held in the highest esteem at trial and has suffered none of the personal prejudice that worried the Supreme Court in *Klopfer v. North Carolina*, 386 U.S. 213 (1967).

Indeed, Mr. Vispi is dependant for his livelihood upon referrals from other people. However, it was not the pending charges that dissuaded others from using Mr. Vispi's professional services. Rather, it was Mr. Vispi's chosen lifestyle and work patterns that interfered with his career, the same habits that the defense claimed prevented his timely filing of income tax returns (p. 307, 340, 341, 347).

Mr. Vispi was also relieved from a great deal of public scorn because the case was transferred to Rochester, out of the sight of his friends and clients. Mr. Vispi was benefited, rather than prejudiced by the eleven-day delay attached to the trans.

Granted, the loss of a witness may be prejudicial. However, the death of Special Agent Francis did not prejudice the defendant in this case for several reasons. First, Agent Pasquarella was assigned to the investigation while Mr. Francis was still alive, thus receiving the benefit of Agent Francis' expertise. Second, Agent Francis prepared a memorandum of his initial interview with Mr. Vispi, which memorandum was received in evidence at trial. Third, Agent Pasquarella was himself experienced, having been assigned the case after more than three years of service as an IRS Special Agent. Fourth,

Revenue Agent Pardi, who conducted the Vispi interview along with Agent Francis, was available at the time of trial. Fifth, Agent Pasquarella was well-qualified to accept Agent Francis' determination that "Vispi had no valid reason for non-filing timely returns" (p. 368) and through further detailed investigation, to reach a well-seasoned decision to refer the case for prosecution of Mr. Vispi.

POINT II

The evidence was sufficient to support the conviction.

The evidence against Mr. Vispi was sufficient to support a conviction of willful failure to file income tax returns for 1967 and 1968.

In reviewing a criminal conviction,

[t]he test here is whether upon the evidence, giving full play to the right of the trial judge to determine credibility, weigh the evidence and draw justifiable inferences of fact, "a reasonable mind might fairly conclude guilt beyond a reasonable doubt." *United States v. Freeman*, 498 F.2d 569, 571 (2d Cir. 1974); *See also Glasser v. United States*, 315 U.S. 60 *reh. denied*, 315 U.S. 827 (1942).

In the instant case, there is no reasonable doubt as to the guilt of Defendant Vispi.

The trial judge must be given "full play" in his capacity as fact-finder in a bench trial to determine credibility, weigh the evidence and draw justifiable inferences. Judge Burke rendered a fair decision based on the evidence presented and the relevant case law, as this brief will show. Further, as discussed in the Statement of the Case above, he had ample time to afford the transcript the careful review it deserved. Finally, the Judge had time to study the post-trial memoranda of counsel.

The findings entered by the Court comply with Rule 23(c) Federal Rules of Criminal Procedure, since there was no request

for more specific findings. In addition, the Court's finding of "guilty knowledge" is the same as "willfulness" as defined by the cases cited below.

There is no dispute that Mr. Vispi made over \$600.00 for each of the years 1967 and 1968 (Exhibits G-3, 4, 5, 6). Further, there is no dispute that the defendant knew he was required to file income tax returns for 1967 and 1968 (p. 293).

There should be no dispute as to the element of willfulness. In *United States v. Bishop*, 412 U.S. 346 (1973) the Supreme Court adopted a uniform meaning for "willfully" in both tax misdemeanor and tax felony statutes. The Court stated that the word "willfully" in these statutes "generally connotes a voluntary, intentional violation of a known legal duty." *Bishop* at 360. The Court went on to rule that "we therefore shall continue to require, in both tax felonies and tax misdemeanors that must be done 'willfully', the bad purpose or evil motive described in [*United States v. Murdock*, 290 U.S. 389 (1933)]." *Bishop* at 361.

The Government urges that this Court adopt a reading of *Bishop* similar to that of the Seventh Circuit in *United States v. McCorkle*, 511 F.2d 482 (7th Cir. 1975). In *McCorkle* the Court reasoned that:

the [*Bishop*] Court used the terms "bad purpose" and "evil motive" as a "convenient method" of referring to the longer definition of "willfully" as a "voluntary, intentional violation of a known legal duty," and not as engrafting an intent to defraud requirement or other similar evil purpose on that definition. *McCorkle* at 485.

Similarly, in *United States v. Hawk*, 497 F.2d 365 (9th Cir.) cert. denied, 419 U.S. 838 (1974), the Ninth Circuit interpreted *Bishop* to mean that willfulness only requires an intentional violation of a known legal duty. *Hawk* found that the thrust of *Murdock* was that the requirement of willfulness is satisfied by proof that the act was done voluntarily and with knowledge that

it was wrongful, and concluded that the terms bad purpose and evil motive are merely "convenient shorthand expression[s]" for the required elements of proof. *Hawk* at 368.

The judge, as trier of fact, found "the defendant with guilty knowledge failed to file the required income tax returns for 1967 and 1968 within the period required by law as charged in the Information." The judge correctly made this finding on the basis of evidence presented in light of the appropriate case law (p. 358).

If, however, this Court requires that the more stringent standard of bad purpose or evil motive is necessary to sustain this conviction, the Government provided ample evidence to attest to such bad purpose and evil motive.

The first item that demonstrates willfulness is Mr. Vispi's pattern of failure to file timely income tax returns. His 1965 and 1966 tax returns were not filed until April, 1968 (Exhibits G-1 and G-2). His 1967 and 1968 returns were not filed until January, 1970, well after criminal investigation had begun. In addition, his 1965 and 1966 New York State returns were filed delinquent and his 1967 and 1968 New York State returns were not filed at all (p. 331).

This four year pattern of delinquent filing is patently inconsistent with Mr. Vispi's claim that he intended to file his returns but because of his forced move in December, 1967 he lost his records. At best, if the trier of fact found that testimony credible it would only offer him an excuse for filing late his 1967 tax returns. Rather, the proof shows a four year pattern of filing delinquent and therefore clearly demonstrates what a reasonable mind might fairly conclude beyond a reasonable doubt, that Mr. Vispi made a conscious, voluntary, intentional decision to violate his known legal duty of filing timely tax returns. As Judge Burke put it, he failed to file the required returns "with guilty knowledge." (p. 358).

A second indication of willfulness is Mr. Vispi's lie to Revenue Agent Pardi on April 22, 1969 in an attempt to conceal his failure to file 1967 and 1968 returns. Agent Pardi testified that while conducting an audit of Mr. Vispi's 1965 and 1966 returns, he, Pardi, asked the defendant if he had filed his 1967 and 1968 income tax returns (p. 78, 79). Agent Pardi testified that on that date, April 22, 1969, Mr. Vispi answered that he had in fact filed his 1967 and 1968 returns and that he would supply Agent Pardi with copies (p. 79). Yet, the fact was that those returns had not been filed (p. 80). This concealment attempt by Mr. Vispi is clear evidence of willfulness, that is, done with bad purpose and evil motive.

Mr. Vispi's bad faith was a third indication of his willfulness in failing to file his income tax returns. His bad faith is clearly marked by differences between Mr. Vispi's testimony and the documentary evidence.

For example, the defendant testified that he was forced to relocate (p. 310 *et seq.*) and that, because of the move, he could not locate the records necessary to prepare his 1967 return. However, the documentary evidence on this point is inconsistent with Mr. Vispi's testimony. Exhibit G-9 (p. 371) in evidence, an application for extension to file the income tax return for 1967 uses the excuse that Mr. Vispi's accountant was overburdened and therefore unable to complete the defendant's return. This application for extension makes no mention of loss of records. Consequently, either the defendant's application for extension was fraudulent or his testimony was false.

Not only does his excuse listed on the extension application, "due to the heavy workload of my accountant" (Ex. G-9, p. 371) conflict with his trial testimony that he could not locate his records, but it also conflicts with his admissions to the IRS agent that "his accountant told him that even if he did not have the money to pay the tax due and owing, to file the return anyway." (p. 203).

Mr. Vispi's application for an extension of time to file was never granted because he did not fill out that part of the application concerning his prior years' returns. He had not filed all those returns, and deliberately did not answer that question on the application. He had no filing time extensions, and he knew that (p. 224, 331).

Contradiction in the defendant's own testimony is further evidence of his bad faith. Mr. Vispi testified that as a result of his forced relocation his records for 1965 and 1966 were equally unavailable. Yet, he testified that he himself prepared and filed his returns for those years in April 1968, the same time he was attempting to lead the Court to believe that his records were misplaced (p. 335, 336).

Mr. Vispi has no meaningful defense on the issue of willfulness.

Mr. Vispi was characterized as a well-meaning but inept and negligent person and lawyer. Once this facade is pierced, however, the defendant emerges as a disorganized man who made a conscious choice to take care of other obligations in lieu of filing his 1967 and 1968 tax returns, an obligation placed upon him by law.

Mr. Vispi found the time, energy and money to continue his legal practice, complete tax returns for clients (p. 168) and contribute to his political party (p. 206). Yet, he found no time, energy or money to fulfill his legal obligation to file his tax returns.

Mr. Vispi cannot cite his personal problems as a defense to willfulness. *Bernabei v. United States*, 473 F.2d 1385 (6th Cir.), cert. denied, 414 U.S. 825, reh. denied, 414 U.S. 1052 (1973) held that evidence of domestic and financial stresses was irrelevant to the issue of willfulness.

CONCLUSION

The findings of guilt made by the Court below should be affirmed in all respects.

Respectfully submitted,

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The Daily Record

August 20, 1976

Re: United States of America v Joseph C. Vispi (76-1250)

State of New York)
County of Monroe) ss.:
City of Rochester)

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PLAINTIFF-APPELLEE
On August 18, 1976

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